

Town of Northborough

Wetlands Bylaw

(Ch. 6 of the Municipal Code)
& Regulations



Regulations Effective December 1, 1993

Amendments to the Regulations

Effective January 1, 2000
and September 21, 2019

Chapter 6 of the Municipal Code

Chapter 6-04

WETLANDS

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6-04-00F Footnote to Chapter 6-04

[HISTORY: Adopted 5-21-1990 Annual Town Meeting, Art. 29. Amendments noted where applicable.]

Editor's Note: This Article also repealed former Ch. 170, Wetlands, adopted 4-16-1980 ATM, Art. 36.

GENERAL REFERENCES

Excavations — See Ch. 3-08. Zoning — See Part 7.

6-04-010 Purpose

The purpose of this chapter is to protect the wetlands, related water resources and adjoining land areas in the Town of Northborough by prior review and control of activities deemed by the Conservation Commission likely to have a significant or cumulative effect upon wetland values, including but not limited to the following: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water pollution prevention, fisheries,

freshwater shellfish, wildlife habitat, recreation, aesthetics, agriculture and aquaculture values (collectively, the "wetland values protected by this chapter").
(Prior code § 170-1)

6-04-020 Applicability [Amended 4-29-98 ATM, Art. 45 and 4-22-19 ATM, Art 27]

Except as permitted by the Conservation Commission or as provided in this chapter, no person shall remove, fill, dredge, build upon or alter the following resource areas: any freshwater wetland, bordering vegetated wetland, isolated vegetated wetland, marsh, wet meadow, bog or swamp; any bank, beach, lake, river, pond, stream or any land under said waters; any land subject to flooding or inundation by groundwater, surface water or storm flowage; any riverfront area. Any proposed work which falls within one hundred (100) feet of the previously mentioned resource areas or the riverfront area must be approved by the Conservation Commission. Plans of the same are required to be filed by the applicant under M.G.L.A. C. 131, § 40, said plan scale to be no greater than one (1) inch equals forty (40) feet.
(Prior code § 170-2)

6-04-030 Determination of boundaries [Amended 4-28-98 ATM, Art. 46]

The boundary for all vegetatively defined wetlands shall be determined in the field on the basis of standard botanical transect or plot analysis. A "vegetative wetland" is defined as any area where fifty percent (50%) or more of the vegetative community consists of wetland plant species and saturated or inundated conditions exist (as defined in M.G.L.A. C. 131, § 40). The boundary, so marked in the field, shall be surveyed in and upon the required plan at a scale no greater than one (1) inch equals forty (40) feet.
(Prior code § 170-3)

6-04-040 Exceptions

- A. The permit and application required by this chapter shall not be required for maintaining, repairing or replacing but not substantially changing or enlarging an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph or other telecommunication services, provided that written notice has been given to the Commission prior to commencement of the work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.
- B. The permit and application required by this chapter shall not be required for work performed for normal maintenance or improvement of land in agricultural use or in aquacultural use, provided that written notice has been given to the Commission prior to commencement of the work, and provided that the work conforms to performance standards and design specifications in regulations adopted by the Commission.
- C. The permit and application required by this chapter shall not apply to emergency projects necessary for the protection of the health or safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the commonwealth or a political subdivision thereof, provided that advance notice, oral or written, has been given to the Commission prior to commencement of work or within twenty-four (24) hours after commencement, provided that the Conservation Commission or its agent certifies the work as an emergency project, provided that the work is performed only for the time and place certified by the Conservation Commission for the limited purposes necessary to abate the emergency, and provided that within twenty-one (21) days of commencement of an emergency project, a permit application shall be filed with the Commission for review as provided in this chapter. Upon failure to meet these and other requirements of the Commission, the Commission may,

after notice and a public hearing, revoke or modify an emergency project approval and order restoration and mitigation measures.

- D. The permit and application required by this chapter shall be required for all other projects not specifically exempted above.
(Prior code § 170-4)

6-04-050 Applications for permits; requests for determination; certificates of compliance

[Amended 5-17-1993 ATM, Art. 26]

- A. Written application shall be filed with the Commission to perform activities regulated by this chapter affecting resource areas protected by this chapter. The application shall include such information and plans as are deemed necessary by the Commission to describe proposed activities and their effects on the environment. No activities shall commence without receiving and complying with a permit issued pursuant to this chapter.
- B. The Commission in an appropriate case may accept as the application and plans under this chapter the notice of intent and plans filed under the Wetlands Protection Act, M.G.L.A. C. 131, § 40.
- C. Any person desiring to know whether or not a proposed activity or an area is subject to this chapter may, in writing, request a determination from the Commission. Such a request for determination shall contain data and plans specified by the regulations of the Commission.
- D. At the time of an application or request for a certificate of compliance (the fees be charged only after the first inspection fails compliance), the applicant shall pay a filing fee specified in regulations of the Commission. This fee is in addition to that required by the Wetlands Protection Act, M.G.L.A. C. 131, § 40. In addition, the Commission is authorized to require the applicant to pay reasonable costs and expenses of any expert consultant if deemed necessary by the Commission to review the application. The Commission shall waive the filing fee and costs and expenses for an application or request filed by a government agency.

(Prior code § 170-5)

6-04-060 Notice; hearings

- A. Any person filing a notice of intention with the Commission at the same time shall give written notice thereof, by certified mail (return receipt requested) or hand delivery, to all direct abutters at their mailing addresses shown on the most recent applicable tax list of the assessors. The notice to abutters shall enclose a copy of the application or request, with plans, or shall state where copies may be examined and obtained by abutters free of charge. An affidavit of the person providing such notice, a copy of the notice mailed or delivered and return receipts shall be filed with the Commission. When a person requesting a determination is other than the owner, the request, the plans, the notice of the hearing and the determination itself shall be sent by the applicant to the owner.
- B. Hearings.
- (1) The Commission shall schedule a public hearing on any application or request for determination, with written notice given at the expense of the applicant five (5) working days prior to the hearing in a newspaper of general circulation in the municipality.

- (2) The Commission shall commence the public hearing within twenty-one (21) days from receipt of a completed application or request for determination unless an extension is authorized, in writing, by the applicant.
 - (3) The Commission shall issue its permit or determination, in writing, within twenty-one (21) days of the close of the public hearing thereon unless an extension is authorized, in writing, by the applicant.
 - (4) The Commission may combine its hearing under this chapter with the hearing conducted under the Wetlands Protection Act, MGL C. 131, § 40.
 - (5) The Commission shall have authority to continue the hearing to a date certain announced at the hearing, for reasons stated at the hearing, which may include receipt of additional information offered by the applicant or others, information and plans required of the applicant, deemed necessary by the Commission in its discretion, or comments and recommendations of boards and officials listed in § 6-04-070. In the event that the applicant objects to a continuance or postponement, the hearing shall be closed and the Commission shall take action on such information as is available.
- (Prior code § 170-6)

6-04-070 Review by other boards and officials

Any person filing a permit application or a request for determination with the Commission shall provide a copy thereof at the same time, together with a date and time of a scheduled hearing to the Board of Selectmen, Planning Board, Board of Health, Town Engineer, Inspector of Buildings, Board of Water Commissioners, Earth Removal Board and two (2) copies to the State Department of Environmental Protection. The Commission shall seek written comments from appropriate Boards as necessary. The applicant shall have the right to receive any such comments and recommendations and to respond to them at a hearing of the Commission prior to final action.

(Prior code § 170-7)

6-04-080 Issuance or denial of permit; expiration; revocation; recording

- A. If the Commission, after a public hearing, determines that the activities which are the subject of the application are likely to have significant or cumulative effect upon the wetland values protected by this chapter, the Commission, within twenty-one (21) days of the close of the hearing, shall issue or deny a permit for the activities requested. If it issues a permit, the Commission shall impose conditions which the Commission deems necessary or desirable to protect those values, and all activities shall be done in accordance with those conditions.
- B. The Commission is empowered to deny a permit for failure to meet the requirements of this chapter; for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards and other requirements in regulations of the Commission; for failure to avoid or prevent unacceptable significant or cumulative effects upon the wetland values protected by this chapter; and where no conditions are adequate to protect those values.
- C. A permit shall expire three (3) years from the date of issuance. Notwithstanding the above, the Commission, in its discretion, may issue a permit expiring five (5) years from the date of issuance for recurring or continuous maintenance work, provided that annual notification of time and location of work is given to the Commission. Any permit may be renewed once for an additional one-year period, provided that a request for a renewal is received, in writing, by the Commission prior to expiration.

- D. For good cause the Commission may revoke or modify a permit issued under this chapter after notice to the holder of the permit and notice to the public, abutters and town boards pursuant to § 6-04-060 and a public hearing.
- E. The Commission may combine the permit or other action on an application issued under this chapter with the order of conditions issued under the Wetlands Protection Act.
- F. No work proposed in any application shall be undertaken until the permit issued by the Commission with respect to such work has been recorded in the Registry of Deeds or, if the land affected thereby be registered land, in the registry section of the land court for the district wherein the land lies, and until the holder of the permit certifies, in writing, to the Commission that the permit has been so recorded.

(Prior code § 170-8)

6-04-090 Rules and regulations

After public notice and public hearing, the Commission shall promulgate rules and regulations to effectuate the purposes of this chapter. Failure by the Commission to promulgate such rules and regulations or a legal declaration of their invalidity by a court of law shall not act to suspend or invalidate the effect of this chapter.

(Prior code § 170-9)

6-04-100 Definitions

- A. The following definitions shall apply in the interpretation and implementation of this chapter:

ALTER — Includes, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by this chapter:

- (1) Removal, excavation or dredging of soil, sand, gravel or aggregate materials of any kind.
- (2) Changing of preexisting drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns or flood retention characteristics.
- (3) Drainage or other disturbance of water level or water table.
- (4) Dumping, discharging or filling with any material which may degrade water quality.
- (5) Placing of fill or removal of material which would alter elevation.
- (6) Driving of piles, erection or repair of buildings or structures of any kind.
- (7) Placing of obstructions or objects in water.
- (8) Destruction of plant life, including cutting of trees.
- (9) Changing water temperature, biochemical oxygen demand or other physical or chemical characteristics of water.
- (10) Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater.

PERSON — Includes any individual, group of individuals, association, partnership, corporation, company, business, organization, trust, estate, the commonwealth or political subdivision

thereof to the extent subject to town bylaws, administrative agency, public or quasi-public corporation or body, this municipality and any other legal entity, its legal representatives, agents or assigns.

- B. Except as otherwise provided in regulations of the Commission, the definitions of terms in this chapter shall be as set forth in the Wetlands Protection Act, MGL C. 131, § 40.
(Prior code § 170-10)

6-04-110 Special conditions

As part of a permit issued under this chapter, in addition to any security required by any other municipal or state board, agency or official, the Commission may require that the performance and observance of the conditions imposed hereunder be secured wholly or in part by one (1) or more of the methods described below:

- A. Security: by a proper bond or deposit prior to commencement of work. The amount is to be determined by the Conservation Commission or its agent, to be released in whole or in part upon issuance of a certificate of compliance for work performed pursuant to the permit.
- B. Conservation restrictions: by a conservation restriction, easement or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of this municipality, whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.
- C. Deed references. There shall be a deed reference to the fact that there are wetlands resources on the property and that no activity (dredging, altering or filling) shall take place without first contacting the Northborough Conservation Commission. A copy of the deed reference shall accompany the written request for a certificate of compliance.

(Prior code § 170-11)

6-04-120 Enforcement

- A. The Commission, its agents, officers and employees shall have authority to enter upon privately owned land for the purpose of performing their duties under this chapter and may make or cause to be made such examinations, surveys or sampling as the Commission deems necessary.
- B. The Commission shall have authority to enforce this chapter, its regulations and permits issued thereunder by violation notices, administrative orders and civil and criminal court actions.
- C. Upon request of the Commission, the Board of Selectmen and the Town Counsel shall take legal action for enforcement under civil law. Upon request of the Commission, the Chief of Police shall take legal action for enforcement under criminal law.
- D. The Board of Selectmen, after consultation with the Conservation Commission, shall appoint a compliance officer who shall have the authority to assist the Commission with enforcement.

(Prior code § 170-12)

6-04-130 Violations and penalties

Any person who violates any provision of this chapter, regulations thereunder or permits issued thereunder shall be punished by a fine of not more than one hundred dollars (\$100.) for the first violation, two hundred dollars (\$200.) for the second violation and three hundred dollars (\$300.) for subsequent violations as allowed under MGL C. 40, § 21 D. Each day or portion thereof during

which a violation continues shall constitute a separate offense, and each provision of the chapter, regulation or permit violated shall constitute a separate offense.
(Prior code § 170-13)

6-04-140 Burden of proof

The applicant for a permit shall have the burden of proving by a preponderance of the credible evidence that the work proposed in the application will not have unacceptable significant or cumulative effect upon the wetland values protected by this chapter. Failure to provide adequate evidence to the Commission supporting this burden shall be sufficient cause for the Commission to deny a permit or grant a permit with conditions.
(Prior code § 170-14)

6-04-150 Appeals

A decision of the Commission shall be reviewable in the Superior Court in an action filed within sixty (60) days thereof, in accordance with MGL C. 249, § 4.
(Prior code § 170-15)

6-04-160 Statutory authority

This chapter is adopted under the Home Rule Amendment of the Massachusetts Constitution and the Home Rule statutes, independent of the Wetlands Protection Act, MGL C. 131, § 40, and regulations thereunder.
(Prior code § 170-16)

6-04-170 Severability

The invalidity of any section or provision of this chapter shall not invalidate any other section or provision thereof nor shall it invalidate any permit or determination which previously has been issued.
(Prior code § 170-17)

TOWN OF NORTHBOROUGH

WETLANDS REGULATIONS

Approved by Northborough Conservation Commission on October 18, 1993
Revisions Approved by the Northborough Conservation Commission on October 25, 1999
Revisions Approved by the Northborough Conservation Commission on June 10, 2019
Effective September 21, 2019

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1. Introduction and Purpose

1.1 Authority. These Wetlands Regulations (the “Regulations”) are promulgated by the Northborough Conservation Commission (the “Commission”) pursuant to authority granted to it under Section 6-04-090 of the Town of Northborough Administrative Code (the “Wetlands Bylaw”).

1.2 Purpose. The purpose of the Wetlands Bylaw is to protect the wetlands, related water resources and adjoining land areas in the Town of Northborough by prior review and control of activities deemed by the Commission likely to have a significant or cumulative effect upon wetland values, including but not limited to the following: public or private water supply, ground water, flood control, erosion and sedimentation control, storm damage prevention, water pollution prevention, fisheries, fresh water shellfish, wildlife habitat, recreation, aesthetics, agriculture and aquaculture values.

The purpose of the Regulations is to establish definitions, uniform procedures and standards by which the Commission will carry out its responsibilities under the Wetlands Bylaw.

1.3 Applicability. Except as permitted by the Commission or as provided in the Wetlands Bylaw, no person shall remove, fill, dredge, build upon or alter the following resource areas:

- a. Any freshwater wetland, bordering or isolated vegetated wetland, marsh, wet meadow, bog or swamp;
- b. Any bank, beach, lake, river, pond, stream or any land under said waters;
- c. Any land subject to flooding or inundation by ground water, surface water run-off or storm flowage; and
- d. Any riverfront area.
- e. Any proposed work, which falls within 100 feet of such resource areas, or within the riverfront area, must be approved by the Commission.

1.4 Revision. The Regulations may be revised from time to time by the Commission after public notice and hearing as required by the Wetlands Bylaw.

2. Definitions

The following definitions shall apply in the interpretation and implementation of the Wetlands Bylaw and the Regulations. For any terms not defined in the Regulations or in the Wetlands Bylaw the definitions used in the Massachusetts Wetlands Protection Act (M.G.L. c. 131, §40 as amended) and regulations thereunder (310 CMR 10.00 as amended) shall apply.

2.1 Agriculture. As defined in 310 CMR 10.04 as amended shall apply in the Regulations.

2.2 Alter. Includes, without limitation, the following activities when undertaken to, upon, within or affecting resource areas protected by the Wetlands Bylaw:

- a. Removal, excavation or dredging of soil, sand, gravel or aggregate materials of any kind;
- b. Changing of pre-existing drainage characteristics, flushing characteristics, salinity distribution, sedimentation patterns, flow patterns or flood retention characteristics;
- c. Drainage or other disturbance of water level or water table;
- d. Dumping, discharging or filling with any material which may degrade water quality;
- e. Placing of fill or removal of material which would alter elevation;
- f. Driving of piles, erection or repair of buildings or structures of any kind;
- g. Placing of obstructions or objects in water;
- h. Destruction of plant life, including cutting of trees;
- i. Changing water temperature, biochemical oxygen demand or other physical or chemical characteristics of water; and
- j. Any activities, changes or work which may cause or tend to contribute to pollution of any body of water or groundwater.

2.3 Aquaculture. As defined in 310 CMR 10.04 as amended shall apply in the Regulations.

2.4 Bordering and Isolated Vegetated Wetlands. Vegetated Wetlands are freshwater wetlands, including both bordering vegetated wetlands (i.e., bordering on freshwater bodies such as on creeks, rivers, streams, ponds and lakes), and isolated vegetated wetlands which do not border on any permanent water body. The types of freshwater wetlands are wet meadows, marshes, swamps, bogs and vernal pools. Vegetated Wetlands are areas where soils are saturated and/or inundated such that they support a predominance of wetland indicator plants. The ground water and surface water hydrological regime, soils and the vegetational community which occur in each type of freshwater wetlands, including both bordering and isolated vegetated wetlands, are defined under the Bylaw based on G.L. c. 131, § 40.

2.4.1 The boundary of Vegetated Wetland, whether Bordering or Isolated, is the line within which 50% or more of the vegetational community consists of wetland indicator plants and saturated or inundated conditions exist. Wetland indicator plants shall include but not necessarily be limited to those plant species identified in the Act.

2.4.2 The boundary shall be defined or delineated by the following:

- a. Areas containing a predominance of wetland indicator plants are presumed to indicate the presence of saturated or inundated conditions. Therefore, the boundary as determined by 50% or more wetland indicator plants shall be presumed accurate when:
 - 1. all dominant species have an indicator status or of obligate, facultative wetland+, facultative wetland, or facultative wetland – and the slope is distinct or abrupt between the upland plant community and the wetland plant community; or
 - 2. the Conservation Commission determines that sole reliance on wetland indicator plants will yield an accurate delineation.

- b. When the boundary is not presumed accurate as described in (2.4.2)(a)(1.-2.) or to overcome the presumption, credible evidence shall be submitted by a competent source demonstrating that the boundary of Vegetated Wetlands is the line within which 50% or more of the vegetational community consists of wetland indicator plants and saturated or inundated conditions exist. The Conservation Commission must evaluate vegetation and indicators of saturated or inundated conditions if submitted by a credible source, or may require credible evidence of saturated or inundated conditions sufficient to support wetland indicator plants, which shall include one or more of the following:
 - 1. groundwater, including the capillary fringe, within a major portion of the root zone;
 - 2. observation of prolonged or frequent flowing or standing surface water;
 - 3. characteristics of hydric soils.
- c. Where an area has been disturbed (e.g., by cutting, filling, or cultivation), the boundary is the line within which there are indicators of saturated or inundated conditions sufficient to support a predominance of wetland indicator plants, a predominance of wetland indicator plants, or credible evidence from a competent source that the area supported, or would support under undisturbed conditions, a predominance of wetland indicator plants prior to the disturbance or characteristic of hydric soils.

2.5 Bordering Land Subject to Flooding (BLSF) Bordering Land Subject to Flooding is an area with low, flat topography adjacent to and inundated by flood waters rising from creeks, rivers, streams, ponds or lakes. BLSF extends from the banks of these waterways and water bodies. Where a bordering vegetated wetland occurs, BLSF extends from said wetland. The boundary of BLSF is the estimated maximum lateral extent of floodwater, which will theoretically result from the statistical 100-year frequency storm. Said boundary shall be that determined by reference to the most recently available flood profile data prepared for the Town of Northborough under the National Flood Insurance Program administered by the Federal Emergency Management Agency. Said boundary, so determined, shall be presumed accurate. This presumption may be overcome by credible evidence from a registered professional engineer or other professional competent in such matters. Where National Flood Insurance Program profile data is unavailable, the Commission may require the applicant to determine the boundary of BLSF by engineering calculations prepared by a registered professional engineer or other professional competent in such matters. The engineering calculations shall be based upon a design storm of seven (7) inches of precipitation in twenty-four (24) hours using the standard methodologies set forth in the U.S. Soil Conservation Service Technical Release No. 55 as amended, "Urban Hydrology for Small Watersheds" and Section 4 of the U.S. Soil Conservation Service, "National Engineering Hydrology Handbook." In

determining the boundaries of the BLSF, the Commission shall also consider an observed flood boundary provided that the observation is documented and recorded.

2.6 Buffer Zone. The buffer zone includes all land within on hundred (100) horizontal feet of any freshwater wetland, bordering vegetated wetland, marsh, wet meadow, bog or swamp; any bank, beach, lake, river, pond, stream or any land under said waters; any land subject to flooding or inundation by ground water, surface water or storm flowage. Areas subject to jurisdiction identified in 310 CMR 10.02(1)(b) to (f) do not have a buffer zone.

2.7 Isolated Land Subject to Flooding (ILSF). As defined by 310 CMR 10.57(2)(b) as amended except that it is an area, which at least once a year confines standing water to a volume of at least 1/8 acre-feet.

2.8 Riverfront Area. As defined in 310 CMR 10.58 as amended shall apply in the Regulations. All streams shown on the USGS Quadrangle as perennial shall be included in these Regulations.

2.9 Person. Includes any individual, group of individuals, association, partnership, corporation, company, business, organization, trust, estate, the commonwealth or political subdivision thereof to the extent subject to town bylaws, administrative agency, public or quasi-public corporation or body, this municipality and any other legal entity, its legal representatives, agents or assigns.

2.10 Structure. A combination of materials assembled at a fixed location to give support or shelter or for other purposes, including, but not limited to: buildings, frameworks, tents, wells, bridges, stadiums, tennis courts, swimming pools, barns, reception or communication dishes, antennas, towers, monopoles, flagpoles, dog or play houses, detached garages, detached storage sheds, retaining walls, and the like.

3. General Provisions

All general provisions in 310 CMR 10.53 as amended shall apply in the Regulations. In addition, the following shall apply.

3.1 Exceptions. A Permit shall not be required for maintaining, repairing or replacing but not substantially changing or enlarging an existing and lawfully located structure or facility used in the service of the public to provide electric, gas, water, telephone, telegraph or other telecommunication services, provided that written notice has been given to the Commission prior to commencement of the work, and provided that the work conforms to performance standards and design specifications in the Regulations. A Permit is also not required for work performed for normal maintenance or improvement of land in agricultural use or in aquacultural use, provided that written notice has been given to the Commission prior to commencement of the work, and

provided that the work conforms to performance standards and design specifications in the Regulations.

3.2 Limited Project Wetland Crossings. Section 310 CMR 10.53(3) indicates that the Commission has discretionary authority to issue permits for limited projects. In addition, DEP Policy 88-2 which is an interpretation of 310 CMR 10.53(3)(e) on limited project wetland crossings for new access roadways and driveways indicates that the Commission “may require the applicant to evaluate the reasonableness of any previously or currently available alternatives including the realignment or reconfiguration of the project.” In order to assist in the evaluation of alternatives, the applicant shall submit an additional concept plan for each wetland crossing proposed in a limited project. The additional concept plan must show a potential use of the property under a configuration, which eliminates each proposed crossing. For example, if an applicant proposes a limited project with two wetland crossings, three plans should be submitted, one showing the proposed project with two crossings, and alternatives showing the project with one crossing and no crossings. A concept plan requires only existing topography, wetlands, roadways, lot lines, and wetland impact areas. The requirements of Section 5 herein shall not apply to concept plans.

3.3 Activities within the Buffer Zone. Activities proposed to occur exclusively within the buffer zone are eligible for a Negative Determination of Applicability, if the Commission determines, within its discretion that:

- a. the alteration is less than 5,000 square feet or 10% of the buffer zone on the lot;
- b. a minimum 50 foot wide area of undisturbed vegetation along the resource area is provided;
- c. stormwater is managed according to standards established by the Department, in its Stormwater Management Policy, November, 1996 and as amended;
- d. the project does not border an Outstanding Resource Water;
- e. the buffer zone does not contain Estimated Wildlife Habitat; as shown on the most recent map,
and
- f. erosion and sedimentation controls are provided at the limit of work to protect resource areas.

At the discretion of the Commission, unusual characteristics of the site, such as steep slopes, or potential impacts over time that may require oversight through continuing conditions in a Certificate of Compliance, shall require the filing of a NOI.

3.4 Erosion and Sediment Control.

3.4.1 Preamble. Sedimentation as a result of land development has long been acknowledged as the largest identifiable source of pollution and degradation of our wetlands. The intent of this section is to describe

appropriate standards and measures applicable to all projects involving land disturbance.

3.4.2 Presumption. Where a proposed activity involves the removal of vegetative cover, or significant disturbance of the surface, erosion is presumed to occur. This presumption may be overcome by providing a preponderance of credible evidence to the Commission that site conditions (e.g. soil and slope) will prevent sediment from leaving the disturbed area. In the event that the presumption is deemed to have been overcome, the Commission shall make a written determination to this effect.

3.4.3 General Performance Standards. Where the presumption of Section 3.4.2 is not overcome, the project shall meet the following performance standards. Any proposed alteration shall not expose or cause soil to be exposed so that uncontrolled erosion occurs. Evidence of this condition may include the formation of gullies, the cutting back of existing banks by stormwater flow or the presence of visible sediment in the runoff. Erosion shall be mitigated by a combination of the following means as appropriate to the specific site:

- a. Minimize the amount of exposed ground and the length of time it is exposed.
- b. Reduce the steepness and length of slopes on the site.
- c. Divert flows away from disturbed areas during construction in an approved manner.
- d. Protect exposed surfaces through vegetative or other stabilizing cover.
- e. Decrease the velocity of runoff through acceptable construction practices, e.g. check dams, slope breaks, berms, and improved (i.e., vegetation, riprap) drainage surfaces.
- f. Trap sediment in basins and behind barriers (e.g., staked hay bales and fencing). The barriers are to be keyed into the ground to prevent sediment from passing under them.
- g. Maintain and adjust erosion and sediment control measures continuously during construction.
- h. Implement Best Management Practices (BMP's) in compliance with the DEP Stormwater Management Policy.
- i. Total Suspended Solid (TSS) removal shall be provided to equal or exceed DEP standards.

3.5 Denials. The Commission is empowered to deny a Permit for failure to meet the requirements of the Wetlands Bylaw; for failure to submit necessary information and plans requested by the Commission; for failure to meet the design specifications, performance standards, and other requirements of the Regulations; for failure to avoid or prevent unacceptable significant or cumulative effects upon the wetland values protected by the Wetlands Bylaw; or for situations where no conditions may be imposed which are adequate to protect those values.

3.6 Burden of Going Forward. The applicant shall have the burden of going forward by providing credible evidence from a competent source in support of all matters asserted by the applicant in accordance with his or her burden of proof as set forth in Section 3.7.

3.7 Burden of Proof. The applicant shall have the burden of proving by a preponderance of credible evidence that the work proposed in the Application for Permit will not have an unacceptable significant or cumulative effect upon the wetland values protected by the Wetlands Bylaw. Failure to provide such evidence to the Commission shall be sufficient cause for the Commission to: 1) deny a Permit; 2) grant a Permit with conditions; or 3) request permission to continue the hearing in order that the applicant or others may present additional evidence.

3.8 Presumption Concerning Title 5 of the State Environmental Code. A subsurface sewage disposal system that is to be constructed in compliance with the requirements of Title 5 of the State Environmental Code (310 CMR 15.00 as amended), or more stringent Board of Health Requirements shall be presumed to protect the resource areas identified in 6-04-020 of the Wetlands Bylaw, but only if none of the components of said system is located within the following resource areas:

- a. Freshwater Wetland
- b. Bordering or Isolated Vegetated Wetland
- c. Marsh
- d. Wet Meadow
- e. Bog
- f. Bank
- g. Beach
- h. Lake
- i. River
- j. Pond
- k. Stream
- l. Any land under said waters
- m. Any land subject to flooding
- n. Any land subject to inundation by ground water, surface water or storm flowage

and only if the leaching facility of said system is setback at least one hundred (100) feet horizontally from the boundary of said resource areas, and if the tank of said system is setback at least fifty (50) feet horizontally from the boundary of said resource areas, or a greater distance as may be required by the Board of Health. Within the Riverfront Area, the soil absorption system shall not be located within 200 feet of the mean annual high-water line unless the applicant proves (by an alternatives analysis) that there is no alternative location on the lot which conforms to 310 CMR 15.000 without requiring a variance as determined by the Board of Health, with less adverse effects on the resource area.

This presumption, however, shall apply only to impacts of the discharge from the sewage disposal system, and not to the impacts from construction of that system, such as erosion and siltation from the excavation, placement or fill, or removal of vegetation.

The setback distance specified above shall be determined by measuring from the boundary of the resource area in question, or from the contour at the mean annual flood elevation, whichever is further from the water body.

The setback distance specified above shall not be required for the renovation or replacement (but is required for the substantial enlargement) of septic systems constructed prior to the effective date of 310 CMR 10.00, provided no alternative location is available on the lot and such work has been approved by the Board of Health or the Department of Environmental Protection, as required by law.

This presumption may only be overcome by credible evidence from a competent source that compliance will not protect the interests identified in the Wetlands Bylaw.

3.9 Waivers. The Commission may in any particular case, where such action is in the public interest and not inconsistent with the intent and purpose of the Wetlands Bylaw, waive strict compliance with those portions of the Regulations which are not required by the Wetlands Bylaw. Any person seeking a waiver pursuant to this section shall make such request in writing, specifically identify those portions of the Regulations for which a waiver is sought, and all reasons in support of the request for the waiver.

4. Performance Standards

4.1 Activities within Areas Subject to Protection under the Wetlands Bylaw. The general performance standards for Banks, Land Under Water Bodies, Bordering Land Subject to Flooding, Isolated Land Subject to Flooding and Riverfront Area shall be as stated in 310 CMR 10.00 as amended. The general performance standards for Bordering Vegetated Wetland (BVW) and Isolated Vegetated Wetlands (IVW) shall be as stated in 310 CMR 10.55 as amended except where an alteration of BVW or IVW is proposed. The Commission will consider projects requiring the permanent alteration of up to three thousand five hundred (3,500) square feet of BVW and IVW, combined, as permitted by 310 CMR 10.55(4)(b) as amended only if the applicant demonstrates: 1) no practical alternative is available; 2) project scope and design minimize the amount of resource area destroyed; 3) in the judgment of the Commission such work will not lead to degradation of additional BVW or IVW; and 4) replication area is provided in a ratio of 1.5:1 for the BVW and IVW destroyed.

4.1.1 Performance Standards for Wetland Replication. Where a replication of BVW and/or IVW is proposed, the applicant shall submit complete replication plans and a replication report with the Application for Permit. In addition, the following requirements shall apply:

- a. The replication plan and report shall include, at a minimum, topography, location and size of BVW and/or IVW to be altered, the location and size of the replication area, a description of the BVW

- and/or IVW to be altered, and a description and detailed methodology of the replication work;
- b. The replication area shall be completed before the project is completed;
 - c. A wetlands specialist with at least two years experience in wetlands replication shall supervise the replication work;
 - d. Written reports shall be submitted by the applicant at the end of each growing season stating the condition of erosion controls and documenting the condition of growth of the replicated area;
 - e. An as built report and an as built plan of the replication area, both certified by the wetlands specialist, shall be submitted and shall provide the date the BVW and/or IVW was excavated, the soil depth data of such excavation, the dates of planting and, if applicable, replanting of replication areas along with the percentage of cover of individual species; and
 - f. No certificate of compliance shall be issued for the Permit authorizing the replication work until all conditions of this section have been complied with and at least two full growing seasons have elapsed since the replication work began. At its discretion, the Commission may issue a certificate of compliance prior to the completion of two (2) full growing seasons upon receipt of a bond or other security in an amount and upon such terms as are acceptable to the Commission.

4.2 Activities within the Buffer Zone.

4.2.1 Preamble. Projects undertaken within 100 feet of a resource area have a high likelihood of altering that area, either during construction or from routine operation of the completed project. In the experience of the Commission, projects in that part of the buffer zone closest to the wetland almost inevitably cause degradation of the resource area. The intent of this section is to explain activities that are and are not acceptable adjacent to resource areas.

4.2.2 Presumption. Within a buffer zone all activities that involve removal of vegetation (except routine lawn and garden maintenance), grading, filling, excavation, erection of permanent structures, application of inorganic fertilizers (excluding lime and other soil treatments approved by the Commission) or application of pesticides whose labels indicate they are toxic to aquatic organisms, is presumed to alter the adjacent resource areas. This presumption may be overcome by meeting the general performance standards set forth below.

4.2.3 General Performance Standards. No foundation, building, road, sidewalk, or other permanent structure shall be placed within thirty five (35) feet of any resource area. Furthermore, no grading, filling, excavation, removal of vegetation or other construction activity shall be

allowed within twenty five (25) feet of said resource areas. Notwithstanding the above, the Commission may allow work closer to resource areas if needed: (a) to provide access to an area where an alteration of resource areas has been allowed; (b) if the work qualifies as a limited project (310 CMR 10.53 (3) as amended); or (c) for storm water outlet structures. In other projects the Commission may allow work closer to a resource area if the applicant demonstrates: (1) alternatives have been considered and in the judgment of the Commission no practical alternative is available; (2) project scope and design minimize work in close proximity to resource areas; (3) site conditions (including but not limited to slope, soil type and hydrology) will allow prevention of wetland damage from such work; and (4) such work will not lead to encroachment on the resource area after completion of the project. For projects involving steep slopes, highly erodible soils, extensive disturbed areas, or hydrologic conditions likely to promote significant erosion, the Commission may require a wider undisturbed buffer to ensure protection of wetland resource areas. Furthermore, the presumption of wetland resource alteration from fertilizers and pesticides may be overcome by providing qualified technical data to the Commission indicating that the chemical products will not alter wetland resource areas.

4.3 Riverfront Area

4.3.1 Preamble. Projects undertaken within the riverfront area have a high likelihood of altering that area, either during construction or from routine operation of the completed project. These areas are also likely to be significant to protect the private or public water supply; to protect groundwater; to provide flood control; to prevent storm damage; to prevent pollution; to protect wildlife habitat and to protect fisheries. The intent of this section is to emphasize activities that are and that are not acceptable within this resource area.

4.3.2 Presumption. Within this area all activities that involve removal of vegetation, grading, filling, fertilizers, pesticides and other chemical application is presumed to alter the resource area. This presumption may be overcome by meeting the general performance standards set forth in 310 CMR 10.58(4), and below.

4.3.3 General Performance Standards. No foundation, building, road, sidewalk, or other permanent structure shall be placed within the resource area except as allowed by 310 CMR 10.58. Furthermore, no grading, filling, excavation, removal of vegetation, or other construction activity shall be allowed within 200 feet of the annual mean high water level of any river. Notwithstanding the above, the Commission may allow work within the resource area provided the applicant demonstrates that the work will not be detrimental to the resource area. Furthermore the presumption

of wetland resource alteration from fertilizers, pesticides, and de-icing chemicals may be overcome by providing qualified technical data to the Commission indicating that the chemical products will not alter the resource area or adjacent waters.

5. Plans and Engineering Information

5.1 General. Plans shall describe the proposed activity and its effect on the environment.

All plans, drawings, sketches, and calculations shall be legible and dated and signed by the person responsible for their preparation. Plans and drawings involving the practice of surveying or engineering shall be stamped and signed by a professional surveyor or engineer. Plans shall be consistent with those submitted to other Town boards and departments.

5.2 Plan Requirements for A Request for Determination of Applicability. Unless otherwise authorized by the Commission, plans submitted for a Request For Determination of Applicability shall include the following information at a minimum:

- a. A project locus map copied from the U.S. Geological Survey quadrangle sheet or a Town of Northborough map showing the location of the proposed activity.
- b. Names and locations of adjacent roadways.
- c. Property lines with distances.
- d. On all drawings the title designating the project location, the name of the person preparing the drawings, the date prepared and any revision dates.
- e. Delineation of all known resource areas and the buffer zones as defined and in 310 CMR 10.00 as amended and in the Regulations.
- f. Location of all existing and proposed structures, paved areas and other alterations.

5.3 Plan Requirements for an Application for Permit. Unless otherwise authorized by the Commission, plans submitted for an Application for Permit shall include the following information at a minimum:

- a. A project locus map copied from the U.S. Geological Survey quadrangle sheet or Town of Northborough map showing the location of the proposed project.
- b. Names and locations of adjacent roadways.
- c. Property lines including distances.
- d. The title designating the project location, the name of the person preparing the drawings, the date prepared and any revision dates.
- e. Delineation of all known resource areas and the buffer zones as defined in 310 CMR 10.00 as amended and in the Regulations.
- f. Location of all existing and proposed structures, paved areas, grading, and other alterations.
- g. Existing and proposed contours of the entire site and affected adjacent areas. Generally, two (2) foot contours should be shown. Contours should refer to the North American Vertical Datum (NAVD) 1988 and any amendments thereof. Horizontal Datum should refer to North American Datum (NAD) 83

Zone 4176 Massachusetts State Plane. No assumed benchmarks shall be accepted.

- h. Location of existing and proposed storm water management facilities, BMP's, and associated engineering data.
- i. Location of resource areas proposed to be filled and associated replication areas. Cross sections showing slopes, bank and bottom treatment of each resource area to be altered. Locations of cross sections must be identified.
- j. Locations and elevations of cellars or floors and subsurface sewage disposal systems, including leaching facilities and reserve leaching areas.
- k. Location of all existing and proposed wells.
- l. Soil characteristics of the site.
- m. Erosion and sediment control plans.

Layout and site plans shall be drawn at commonly acceptable scales, but in no case in a scale greater than one (1) inch = forty (40) feet, without authorization from the commission or its agent, with detail and profile drawings drawn to appropriate scales. For plans involving construction of areas in excess of one acre, methods for stabilizing cleared areas of the site during extended shutdown due to weather, economic conditions or any other cause should be provided.

A construction sequence for proposed erosion and sediment controls, clearing and grubbing, excavation, installation of improvements, grading, and stabilization shall be provided to the Commission prior to the start of construction.

For projects requiring hydraulic/hydrologic calculations, plans showing subcatchment areas, drainage paths, cover, soil types, and design points with labeling which corresponds to the calculations should be provided. Analysis of the 1 (or 2), 10, 25 and 100-year frequency storms for predevelopment and post-development conditions shall be provided as appropriate, including a concise summary of peak rates of flow at design points as well as flood elevations and duration, if the Commission determines that unusual characteristics of the site, complexity of the project or other applicable law so requires.

5.4 Other Information. The requirements stated above are not definitive or exclusive.

An applicant may be required to submit additional information deemed necessary to determine compliance with the Wetlands Bylaw and the Regulations. Applicants and their consultants are encouraged to contact Commission staff to ascertain information requirements for specific projects.

6. Procedures

6.1 Time Periods. In computing any period of time specified in the Wetlands Bylaw or the Regulations, the day of the act or event after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When a period of time prescribed or allowed by the Wetlands Bylaw or the Regulations is less than ten (10) days, intermediate Saturdays, Sundays, and legal

holidays, shall be excluded in the computation. “Legal holiday” includes any day appointed as a holiday by the President or the Congress of the United States or designated by the laws of the Commonwealth of Massachusetts.

6.2 Actions by Conservation Commission. Where the Wetlands Bylaw states that a particular action is to be taken by the Commission, that action is to be taken by more than half the members present at a meeting of at least a quorum. A quorum is defined as a majority of the members then in office.

6.3 Determination of Applicability. Any person, who desires a determination as to whether the Wetlands Bylaw applies to an area, or work to be performed on such area, may submit a written Request for Determination of Applicability to the Commission. The correct application form to be used is WPA Form #1. The Commission will issue its decision in a Determination of Applicability using Form WPA #2. The applicant must give written notice of the filing of a Request for Determination of Applicability to all direct abutters within 100 feet of the property line including owners of land directly opposite on any street, including any in another municipality or across a body of water and other parties as provided in Sections 6-04-060(A) and 6-04-070 of the Wetlands Bylaw. A Request for Determination of Applicability shall be deemed filed pursuant to the Wetlands Bylaw if it includes correct filing fees, plans and other information as required by the Regulations and is either hand delivered or sent by certified mail to the Commission office.

6.4 Abbreviated Notice of Resource Area Delineation. Any person may use the Abbreviated Notice of Resource Area Delineation for the confirmation of a delineated boundary of bordering vegetated wetlands and other resource areas on the site, prior to filing a notice of intent for proposed work. The correct application form is WPA Form #4A. The applicant must give written notice of the filing of a Request for Determination of Applicability to all direct abutters within 100 feet of the property line including owners of land directly opposite on any street, including any in another municipality or across a body of water and other parties as provided in Sections 6-04-060(A) and 6-04-070 of the Wetlands Bylaw. Application shall conform with CMR 310 10.05(4)(b)(2).

6.5 Application for Permit. An application for permit shall be deemed filed pursuant to the Wetlands Bylaw if it includes correct filing fees (see Section 7.2), plans and other information as required by the Regulations and is either hand delivered or sent certified mail to the Commission office. The correct application form for an Application for Permit is a Notice of Intent (WPA Form #3) or an Abbreviated Notice of Intent (WPA Form #4). The Commission will issue its decision in the form of an Order of Conditions using WPA Form #5. The applicant must also give written notice of the filing of an application for permit to all abutters within 100 feet of the property line and including owners of land directly opposite on any street, including any in another municipality or across a body of water other parties as provided in Sections 6-04-060(A) and 6-04-070 of the Wetlands Bylaw.

6.6 Time Limits and Extensions. A Permit shall expire three (3) years from the date of issuance. Notwithstanding the above, the Commission, in its discretion, may issue a Permit expiring five (5) years from the date of issuance and may not be renewed. A project that has been started under a valid permit may apply for a one-year extension, provided that a request for renewal is received, in writing, by the Commission prior to expiration.

6.7 Revocation or Modification of Permit. For good cause the Commission may revoke or modify a Permit issued under the Wetlands Bylaw after notice to the holder of the Permit and notice to the public, abutters and town boards pursuant to Section 6-04-060 of the Wetlands Bylaw and a public hearing.

7. Hearings and Fees

7.1 Hearings. The following shall apply to all hearings held pursuant to the Wetlands Bylaw:

- a. The Commission shall schedule a public hearing upon any application or request for determination, with written notice given at the expense of the applicant five (5) working days prior to the hearing in a newspaper of general circulation in Northborough.
- b. The Commission shall commence the public hearing within twenty-one (21) days from receipt of a completed application or request for determination unless an extension is authorized, in writing, by the applicant.
- c. The Commission shall issue its Permit or determination, in writing, within twenty-one (21) days of the close of the public hearing unless an extension is authorized, in writing, by the applicant.
- d. The Commission may combine its hearing under the Wetlands Protection Act with the hearing under the Wetlands Bylaw.

7.2 Fees.

7.2.1 Amount. As per 801 CMR 4.02 at 310 (1) Department of Environmental Protection.

7.2.2 Additional Local Fee. Filing of a Request for Determination of Applicability, Abbreviated Notice of Resource Area Delineation, or a Notice of Intent shall require the applicant to pay the following filing fee in addition to any required by the Wetlands Protection Act M.G.L. c. 131 §40 and regulations thereunder (310 CMR 10.00):

Request for Determination \$ 75.00

Abbreviated Notice of Resource Area Delineation

50% of the fee as calculated using the methodology of 310 CMR 10.03 (1)

Notice of Intent - per category as defined in 310 CMR 10.03 (7)(c) as amended.

Category 1	\$ 40.00
Category 2	\$ 50.00
Category 3	\$ 100.00
Category 4	\$ 150.00
Category 5	50% of the fee paid pursuant to 310 CMR 10.03 (7)(c)(5)
Category 6	50% of the fee paid pursuant to 310 CMR 10.03 (7)(c)(6)

Amendment to an existing Order of Conditions \$ 50.00

Re-inspection for Certificate of Compliance

Category 1	\$ 25.00
Category 2	\$ 50.00
Category 3	\$ 50.00
Category 4	\$ 75.00
Category 5	\$ 50.00

Extension Permit Fee \$ 50.00

7.2.3 Consultant Fee. A consultant fee shall be paid by the applicant/owner in an amount equal to the actual amount of the costs incurred, plus \$50.00 for

administrative costs, whenever the Commission determines that independent engineering or other expert consultation is deemed necessary to review the application for Permit.

- 7.2.4 Payment.** The filing fee shall be payable upon filing of the Application for Permit or Request for Determination of Applicability. Failure to pay the filing fee when due shall cause the Application for Permit or Request for Determination of Applicability to be deemed incomplete. The consultant fee shall be payable when the Commission appoints an independent consultant. Failure to pay the consultant fee when due shall constitute sufficient cause to deny the Permit.

8. Special Conditions

As part of a Permit the Commission may require that the performance and observance of the conditions imposed hereunder be secured wholly or in part by one or more of the following methods:

- 8.1 Security.** The Commission may require a bond or deposit prior to commencement of work in an amount to be determined by the Commission or its agent. Such bond or deposit shall be released in whole or in part upon issuance of a certificate of compliance for work performed pursuant to the Permit.
- 8.2 Conservation Restrictions.** The Commission may require a conservation restriction, easement or other covenant enforceable in a court of law executed and duly recorded by the owner of record, running with the land to the benefit of the Town of Northborough, whereby the conditions of the Permit shall be performed and observed before any lot may be conveyed other than by mortgage deed
- 8.3 Deed References.** There shall be a deed reference that there are Wetlands Resources on the property and that no activity (e.g. dredging, altering or filling) shall take place without first contacting the Commission. A copy of the deed reference shall accompany the written request for a certificate of compliance.

9. Certificates of Compliance

Within twenty-one (21) days of the receipt of a written request for a certificate of compliance by the applicant or the owner of the property, the Commission shall grant such request if the activity or portions thereof described in the Application for Permit and plans complies with the Permit. The deed reference required by Section 8.3 of the Regulations and as built plans shall accompany the written request. The as-built plan shall include, at a minimum, and as applicable to the project, elevation of all pipe inverts and outlets, pipe sizes, materials, slopes; all other drainage structures, limits of clearing, grading and fill; all structures, pavement, and contours within 100 feet of wetland resource areas; locations of wetland boundaries; all alterations within wetland resource areas; all wetland replication areas; and all dates of fieldwork.

The certificate of compliance shall state that the activity or portions thereof, have been completed in compliance with the Permit. The certificate of compliance shall be signed by a majority of the members of the Commission present at a meeting of at least a quorum.

9.1 Site Inspections. Prior to the issuance of a certificate of compliance, a site inspection shall be made by the Commission, or its agent. If the Commission determines, after inspection, that the work has not been done in compliance with the Permit, it may refuse to issue a certificate of compliance. Such refusal shall be issued within twenty-one (21) days of receipt of a request for a certificate of compliance, shall be in writing, and shall specify the reasons for denial. In the event that the Commission refuses to issue a certificate of compliance on the grounds that the work has not been done in compliance with the Permit, a reinspection fee as provided in Section 7.1.1 shall be required prior to the consideration of the request for a certificate of compliance by the Commission. Failure to pay the reinspection fee at the time of the request for the certificate of compliance shall cause the request to be deemed incomplete and may be cause for additional denial.

9.2 Certification of Substantial Completion. If a project has been completed in accordance with the plans stamped by a registered professional engineer, architect, landscape architect or land surveyor, a written statement by such person or persons certifying substantial compliance with the plans and setting forth what deviation, if any, exists from the plans approved in the Permit, shall accompany the request for a certificate of compliance, along with “as built” plans as specified in section 9.1, stamped by a registered professional engineer.

9.3 Continuing Conditions. If the Permit contains conditions, which continue past the completion of the work, such as maintenance or monitoring, the certificate of compliance shall specify which, if any, of such conditions shall continue. The certificate of compliance shall also specify to what portions of the work it applies, if it does not apply to all the work regulated by the Permit.

9.4 Recording. All Permits, Certificates of Compliance, and Renewals of Permits shall be recorded in the Land Court or Registry of Deeds; whichever is appropriate by the Commission at the expense of the applicant. No certificate of compliance, Permit or Renewal of Permit shall be released until the Commission has received the recording fee.

10. Emergencies

No Permit or Application for Permit shall initially be required for emergency projects necessary for the protection of the health or safety of the public, provided that the work is to be performed by or has been ordered to be performed by an agency of the Commonwealth or a political subdivision thereof, provided the following conditions are met:

- a. Advance notice, either oral or written has been given to the Commission or its agent prior to commencement of the work or within twenty-four (24) hours after commencement;
- b. The Commission or its agent certifies the work as an emergency project;
- c. The work is performed only for the time and place certified by the Commission for the limited purposes necessary to abate the emergency;

- d. Within twenty-one (21) days of commencement of an emergency project an Application for Permit is filed with the Commission for the emergency work.
- e. The time limitation for performance of emergency work shall not exceed thirty (30) days, unless written approval of the Commission is obtained. Failure to meet these and any other requirements of the Commission may result in revocation or modification of the emergency project approval.

11. Severability

The invalidity of any section or provision of the Regulations shall not invalidate any other section or provision thereof, nor shall it invalidate any Permit or determination, which previously has been issued.

12. Effective Date

The Regulations are effective October 18, 1993. Upon passage the amended Regulations shall take effect on September 21, 2019.